593 Iongo of Bokákyá (Boselo, Bombwanja), married to Bokaa is 'Ifonda
574 of Bowélé; for Mbalaka, daughter of Bolekela wa Imangaiso of the
342 Baséká Lokuli (Bongíli), married to Mbuli is'ea Wela of Bombóngo
556 w'Etefa (Bongale) (1) [286]

[531] 1. She bore the name of Mbálaka (meaning indemnity), because her father had solemnly proclaimed (-békya) and publicly promised that he intended, one day, to place himself in the position of having to pay an indemnity because of his daughter, as proof of his love. Indeed [782] when Mbálaka was married, he killed one of his wives, cut her into pieces, and sent the "meat" to his son-in-law as "the first hen" that his wife would prepare for him. But he did not have to pay [682] [614] the indemnity because the victim's clan was too weak to attempt a war; they did not dare to make a claim and, in order to avoid even greater misfortunes, they resigned themselves to this revolting ignominy.

Article V

Relations Between the Husband and His Wife's Family

606 As has already been said, kinship by marriage is called likilɔ́,
607 and relatives by marriage are called bokilɔ́, bakilɔ́. Mbɔ́tsolɔ́ is a term of respect for very close relatives by marriage (father-in-law, mother-in-law, sometimes brother-in-law or sister-in-law). When there is a considerable age difference between two affinal relatives, the elder one sometimes calls the younger bokilɔ́walé. This happens most frequently when the son-in-law is so young that he can still be considered a child. This term can even be used by an elder brother

586x 178 for this right was recognized by the written laws which have assigned the functions formerly exercised by the "fathers" of families to them. But they are required to act in conformity with the common law, and therefore to listen to the ndonga and report to him.

Before colonization the Nkundó often used other means.

586x Before exploring the question of bride-price reimbursement, we will examine these various actions. For greater clarity we will distinguish between the customs of the pre-European regime and actual practice. Two specific cases will be described at the end.

1. In the past

Let us again make a distinction between two situations:

A. First hypothesis: a wife left her husband. She ran away to her family, first informing the ndonga. If she did not go to him but went straight home instead, the ndonga felt that he had been disregarded, and serious consequences followed, for he inevitably found her in the wrong. That is why this situation very seldom arose. [381] The woman explained her conduct to the ndonga. It was his duty to reconcile her and her husband. A divorce never took place without many interventions on the part of the ndonga.

1) If in spite of all attempts the woman was absolutely unwilling [721] to stay with her husband and definitely left him, the result in most cases was war, unless, of course, the husband also did not care to continue the unhappy union. In such a case he was satisfied with claiming a reimbursement of the bride price. The war, like all others, ended in peace and indemnification; nothing further was discussed. The war was fought against the woman's clan if restitution of the bride price was delayed or not made. However, if the woman went to another man without first going to her family, the abandoned husband declared war on his rival and left his parents-in-law in peace.

586x 2) Sometimes the abandoned husband took revenge on his ●682 rival by assassinating him. If the possibility was open to him --

586x and this was generally the case -- he did not kill him personally
682 but assigned the task to someone else -- his son, his younger
[563] brother, or nephew, etc. Preferably, he hired a Botswá. The price for this service was 20 copper rings, the sum of the bride price paid
[672] for a Botswá woman. Nkundó law places the entire responsibility for an assassination and all its consequences upon the person who orders it performed. Certain of the Batswa specialized in this field. Among them (of those dependent on the Bombwanja) were Esenge of Bokengé, Mbólókó of Bombembe, Wai w'ítúmola of Bakoyó; Lúwá jw'ítómbengándá (died in 1933) also of Bakoyó; Botómba wá Lokio and Mpótó éy'Ilókó of Mbanja (still alive).

The scorned husband had still other means of taking revenge
586x or obtaining indemnification. He made use of them only if the occasion was favorable or if he was not in a position [382] to go into expensive adventures such as a war or an assassination. They were the following:

3) Ikákelo: (1) A relative of his who was married into the

1. See Chapter III, Article VI.

unfaithful wife's clan could be prevented from returning to her husband.

4) The seizure of one of the wives of his recalcitrant father-in-law, or of one of the latter's relatives. This action is called by the generic term lowáála, which signifies "compensation." (2)

2. The woman who was seized was called nginda and her descendants, if there were any, were known as bonginda.

The prisoner was usually put in an etáka (a wooden fork fastened to the neck) (3) to prevent her flight and hasten the reimbursement of

3. See Chapter VI, Article VII, 4, A, b), (1).

[567] the bride price. If the matter was not settled she became a slave.

infraction to follow him in death. It is obeyed even if [445] it is manifestly unfair. They fear reprisal by the deceased, such as that which is thought to have happened after the death of Iloko is Ɛfekele of Lofelí. He had killed his own brother, Mpénda éâ nkotonkale, because the latter had tasted freshly brewed beer instead of leaving [682] that honor to him -- an action which constituted an extremely serious offense. But since the punishment was out of all proportion to the act, the whole family united against the murderer, who was obliged to flee. At his death he disinherited all his brothers in favor of his sons. This will, considered unreasonable and unfair, was not respected; Iloko's only brother, Bondélé wa Wílima, took Bonyengú, the favorite, for himself. But he soon died, and his death was attributed to Iloko's vengeance. Several years ago the family met to finally settle the matter of the inheritance. The largest portion was set aside for Iloko's sons, but one part was awarded to other relatives who were not named in the excluding clause, which referred only to the Baséká Banángá, that is, to Iloko's own brothers.

Sons are never disinherited. If one of them behaves very badly toward his father, when the latter dies he refuses him his benediction (bokako w'ɔlɔ́tsi) and curses him bokako wa tu yo).

3. Inheritance from the wife

As we have seen in Chapter VI, Article II, a wife has no rights of ownership over the fruits of her own labors or of the couple's joint efforts. Consequently, her family can make no claims as regards inheritance; there is nothing to inherit.

Although all the fruits of the wife's activities belong to the husband, most men do not require that their rights be rigidly respected. They leave a part, or the whole, to the family of the [446] deceased, as is done in the case of a widow. (1) After the

1. See the previous article.

feast at the end of mourning, the two clans make an inventory of the property in question. Usually whatever products of her work the woman has left are divided equally between the two clans. Some

769 672 178 Colonization has given rise to a new legal situation which is not provided for in Nkundó traditional law. If a woman takes advantage of the freedom permitted her by colonial legislation and goes to a mission to obtain instruction and make a monogamous marriage, and then contracts an illness from which she dies (at the mission, in the hospital, or even in the home of her family -- a question of place which has no legal importance), we find ourselves confronted by an entirely new situation. The husband no longer considers the woman his wife since she has left him, even though theoretically she continues to retain that status. On the other hand, she has not gone back to her family or gone to live with another man.

Polygamous husbands want to throw the "responsibility" back upon the woman's parents. But actually they have no part in the events, and it is unfair to involve them in the situation.

[197] They do not bring the mission into the matter. As a matter of fact, the mission performs a service to the woman and to society as a whole in trying to elevate it morally and culturally.

What should one think of this situation? In the preceding article we have seen that the husband assumes all risks in relation to the wife. Certain exceptions to this rule [460], which we have explained, have been formulated in Nkundó law; but outside of them, the law retains its dominion, since the exceptions are narrowly defined. Thus it applies to the situation with which we are dealing, and consequently the damages must remain on the husband's account.

Moreover, this interpretation is to be encouraged for the following reason:

The purpose of the legislation involved is to protect freedom in this matter of capital importance and to favor monogamy and the gradual abandonment of polygamy. Polygamists -- as a group -- must perforce suffer from it in one way or another. It is inconceivable that a struggle against an abuse would not affect the persons guilty of it.

Such cases are still very rare, but their frequency may increase with the progress of evangelization.

769 672 682 In terminating this duscussion we must make one point that is related to both of the last two articles. The cause of death has no

768 legal importance. The solutions given are the same whether the
672 cause of death be organic or criminal. If the latter is the case,
● 682 however, the murderer must pay an indemnity, which is given to the person who has been wronged, whether it be the woman's husband or her family; in any case he thus satisfies the requirements of justice.

A woman may be murdered while she is visiting one of her husband's kinswomen in accordance with her husband's wishes. In that case the sister-in-law's husband bears the responsibility. He must indemnify the victim's husband, and he himself is entitled to indemnification by the murderer. To simplify this procedure, the murderer can make his payment directly to the widower; justice is still safeguarded. But in no case does the indemnity go to the victim's father, for legally and economically it belongs to the husband, not to the father, who is indemnified through the funeral payments. [461]

Conclusions

1) A marital union is broken by death only for the person who
581 dies. For the one who remains alive, the dissolution is completed
768 only after other procedures. If the husband dies the widow remains the wife of the heirs and is free only after restitution of the bride price has been made. At the death of the wife the husband can marry a substitute.

A widow's remarriage without restitution of the bride price
581 (and therefore without a new bride price), or that of a widower
587 with a substitute, is considered a continuation of a pre-existing
768 union which has not been dissolved. This continuation is not absolute, however, Actually, it is perfect only in the case of the husband's death, in which case his kin group inherits all his rights and therefore also the rights to the wives he has acquired by means of his capital. On the other hand, if a widower is to continue the relationship after his wife's death, he must pay another bride price.

The difference between the two instances is due to the connection of the bride price with the "ownership" of a woman; she remains subject to it and as a result becomes legally the spouse

841 they could count. Nevertheless, if it happens to a young unmarried mother, little or no fuss is made over it because no one can feel wronged; at most the culprit is scolded. For a married woman, on the other hand, it is one of the most serious infractions. Her husband has an immediate right to the fetus that would have become his child. He cannot beat or mistreat the offender in punishment, for her condition will not permit violence, but he can abandon her to her fate by refusing her all assistance, in particular by refusing to bring her firewood, the heat of which she greatly needs under such circumstances. For she has done him an enormous wrong and has acted with real malice (a͡bnjokel 'inkúnyá, he says), since he married her chiefly so that she would give him descendants. If she dies it is her own fault. Even her family will not support her, for
● [682] they would be accused of being involved in the crime; inevitably they would lose the case and be condemned to indemnify the husband.

843 An abortion which is ascertained to be involuntary [i.e., a miscarriage] is treated like an accident or an illness and the appropriate legal stipulations are applied to it. Thus if it happens while the woman is at her parents' home, the responsibility for it falls on them. Usually the palaver is settled in a friendly manner; the family makes a few nkomf payments, and the question is closed. If relations between the husband and his son-in-law are somewhat strained, the dispute may be drawn out and may result in the breaking up of the marriage. If the woman dies from the accident, the rules given in Article X of the preceding chapter come into play. [469]

Article II. Conception and Pregnancy

842 833 The Nkundó have only a partial notion of the phenomena of conception. They are well aware of which acts cause the procreation of children. They have a perfect knowledge of anatomy and a rich vocabulary pertaining to sexual life. But they know only as much about physiological processes as experience can teach them. Furthermore, they believe that the act of procreation must be repeated several times in order to produce its natural result. Note,